

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHAHEED K. HAMZA,)	
)	
Plaintiff,)	4:06cv3001
)	
vs.)	MEMORANDUM AND ORDER
)	
NEBRASKA DEPARTMENT OF)	
CORRECTIONAL SERVICES, et al.,)	
)	
Defendants.)	

This matter is before the court on the following motions filed by the plaintiff, Shaheed K. Hamza, a prisoner in the custody of the Nebraska Department of Correctional Services ("DCS"): (1) filing no. 9, the Motion for Alternative Method of Payment of Remainder of Filing Fee; (2) filing no. 12, the Motion for Copy of Original Complaint; (3) filing no. 13, the Motion for Leave to Amend Complaint; (4) filing no. 14, the Motion for Additional Summons and 285 Forms; and (5) filing no. 23, the Motion for Leave to File an Amended Complaint. Other than filing no. 9, the other motions are granted, all as discussed below.

The plaintiff's request to pay his filing fee out of a particular fund held by DCS should be addressed to DCS, as this court has no authority over the various accounts and funds held by prison officials on behalf of the inmates in their custody. The Prison Litigation Reform Act ("PLRA") only requires payment of the court's filing fees but does not grant the court any power to administer prisoner trust accounts or to interfere with prison administration of such funds. Therefore, this court cannot direct DCS to withdraw the plaintiff's filing fee installments from any particular fund, except that DCS must comply with the PLRA formula and the "\$10 rule."¹ Filing no. 9 is denied.

Filing nos. 13 and 23 are granted, and the plaintiff shall file his Amended Complaint by November 27, 2006, fully restating his claims and listing all defendants in the caption of the Amended Complaint. As to the defendants, the Amended Complaint shall state whether they are sued in their official capacity, individual capacity, or both capacities.

Filing no. 12 is granted, and the Clerk of Court shall send the plaintiff a copy of the original complaint (filing no. 1). Filing no. 14 is granted, and the Clerk of Court shall send the plaintiff four (4) additional summons forms and four (4) additional USM-285 forms (one

¹Each month in which a prisoner's trust account balance exceeds \$10, an amount equivalent to 20 percent of the preceding month's income is to be deducted for each outstanding federal filing fee. 28 U.S.C. § 1915(b)(2).

of each for the two defendants in their individual capacity named in the original Complaint and one of each for the two defendants in their individual capacity for the two defendants who will be added by the Amended Complaint).

IT IS THEREFORE ORDERED:

(1) That filing no. 9, the plaintiff's Motion for Alternative Method of Payment of Remainder of Filing Fee, is denied, without prejudice to the plaintiff's right to request such relief from the Nebraska Department of Correctional Services;

(2) That filing no. 12, the plaintiff's Motion for Copy of Original Complaint, is granted, and the Clerk of Court shall send the plaintiff a copy of filing no. 1, without charge;

(3) That filing nos. 13 and 23, the plaintiff's Motion for Leave to Amend Complaint and Motion for Leave to File an Amended Complaint, are granted, and the plaintiff shall file his Amended Complaint by November 27, 2006, fully restating his claims and listing all defendants in the caption of the Amended Complaint;

(4) That filing no. 14, the plaintiff's Motion for Additional Summons and 285 Forms, is granted, and the Clerk of Court shall send the plaintiff four (4) additional summons forms and four (4) additional USM-285 forms;

(5) That In their individual capacity, only one defendant may appear on a summons, and a government employee is served, in his or her *individual* capacity, at an address, such as home or present place of employment, wherever the defendant can personally be found and will accept service of process himself or herself or through a person authorized to receive a summons on his or her behalf;

(6) That the plaintiff shall return the completed forms for service of process to the Clerk of Court together with the Amended Complaint; the Clerk will then sign each summons, to be forwarded, together with a copy of the Amended Complaint, to the U.S. Marshal for service of process; the court will copy the Amended Complaint for the Marshal, and the plaintiff does not need to do so; the Marshal shall serve the summons and Amended Complaint without payment of costs or fees; service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

DATED this 31st day of October, 2006.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge